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Magleby v. Garn Respondent's Brief Dckt. 39264

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

Supreme Court No. 39264-2011

CHRISTOPHER J. and JILL MAGLEBY, d.b.a. SELECTIVE BUILDERS,

Plaintiff/Appellant,

v.

KEVIN and TANYA GARN;
IDAHO TRADEMARK PROPERTIES, LLC;
JENKS BROTHERS, INC.,

Defendants/Respondents.

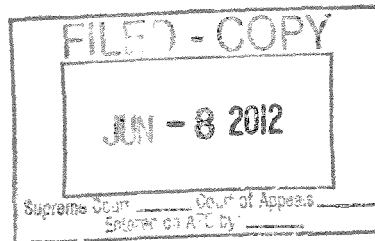
RESPONDENTS GARN'S BRIEF

Appeal from the District Court of the Seventh Judicial District for Fremont County.

Honorable Darren B. Simpson, District Judge, presiding.

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I. STATEMENT OF THE CASE

a. Nature of the Case.

This is the Respondents brief filed by Kevin and Tanya Garn (hereinafter “Garns”). This is in response to an appeal filed by Christopher J. and Jill Magleby, d.b.a. Selective Builders (hereinafter “Maglebys”) in which the District Court limited Maglebys request for attorney’s fees to the amount plead for in their complaint. The District Court also exercised its discretion in limiting an award of post-judgment attorney fees and costs.

b. Factual Statement and Procedural History.

Idaho Trademark Properties, LLC (hereinafter “ITP”) owned real property in Island Park, Idaho where it built a spec cabin. Jenks Brother, Inc. (hereinafter “Jenks”) acted as the general contractor. Jenks hired Maglebys to help with the building of the cabin. While the cabin was being completed, ITP entered into a contract to sell the cabin to the Garns. Garns paid ITP for the cabin. The Maglebys were not paid by ITP or Jenks, so they filed a mechanic’s and materialmen’s lien against the property.

The Maglebys then filed a Complaint against Garns, ITP, and Jenks seeking payment for their work on the property along with foreclosure of their mechanic’s and materialmen’s lien on the property. The Maglebys Complaint stated they were seeking “attorney’s fees and Court costs of \$2,500.00, pursuant to Idaho Code §§ 12-120 and 45-513, if uncontested further. If contested, the amount of attorney fees and Court costs awarded should be the actual cost of attorney fees and Court costs.” *R, p. 11.*

Jenks and ITP answered the Complaint through their attorney, Joshua A. Garner. Garns filed their Answer and Cross-Claim denying the Complaint and seeking to have the other Defendants held responsible for any recovery by Maglebys against Garns.

Maglebys filed a Motion for Partial Summary Judgment, which Garns did not oppose. ITP and Jenks filed various papers opposing Maglebys Motion for Partial Summary Judgment. On May 21, 2010, a hearing was held on the motion. Garns attorney was present, but did not present argument. Maglebys, ITP, and Jenks presented arguments at the hearing. The Court partially granted the Summary Judgment finding the Maglebys had a valid materialmen's lien against the property, but held there were questions of material fact concerning the terms of the contract between Maglebys, Jenks, and ITP.

The attorney for Jenks and ITP moved to withdraw, which the Court granted. Neither Jenks nor ITP appeared in the action within 20 days. Therefore, Maglebys made the decision to seek a default judgment against ITP and Jenks. The Court granted their motion and limited them to \$2,500.00 in attorney's fees. Maglebys filed a Motion to Alter, Amend or Reconsider this decision seeking the higher attorney's fees, which the Court denied. Maglebys then filed a Motion to Set Aside the Default Judgment, which was denied by the Court.

Maglebys settled attorney fees and costs against Garns. Maglebys started to foreclose on the materialmen's lien against the property. Wells Fargo filed papers seeking to stop the sale. Garns delivered a check to Maglebys for the original amount of the judgment, so the Maglebys agreed to vacate the sale.

Maglebys then filed a post-judgment Motion for Costs and Attorney Fees seeking additional attorney fees and costs incurred in collection efforts. Garns objected on the basis that Idaho Code §45-513 did not allow for obtaining attorney fees on appeal, therefore the Maglebys should not be allowed to obtain post-judgment attorney fees under this statute. *R*, p. 587. ITP re-appeared in the case and objected. Garns and ITP also challenged the reasonableness of requested attorney fees and costs.

The Court limited Maglebys Post-Judgment attorney fees and costs to \$990.00, which only related to the foreclosure action and Garns. Garns have tried to pay any final attorney fees and costs, which have been awarded against them by the Court, however any final payment has been refused by Maglebys to ensure they don't jeopardize any rights in this appeal. Following issuance of various final judgment the present appeal was timely brought by Maglebys.

II. ISSUES ON APPEAL

1. Did the District Court correctly exercise its discretion to limit Maglebys award of attorney fees and costs to \$2,500.00 against ITP and Jenks because Maglebys obtained a final judgment against them by default?

OR

Did the District Court correctly exercise its discretion in not setting aside the default judgment against ITP and Jenks?

2. Did the District Court improperly award post-judgment attorney fees against Garns?
3. Are the Garns entitled to attorney fees pursuant to Idaho Code § 12-121 and their costs on appeal pursuant to Idaho Appellate Rule 40?

III. STANDARD OF REVIEW

The issues on appeal are to be reviewed under an abuse of discretion standard. The Court determines “(1) whether the Trial Court correctly perceived the issue as one of discretion; (2) whether the Trial Court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the Trial Court reached its decision by an exercise of reason.” *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

IV. ARGUMENT

- 1. The District Court correctly exercised its discretion to limit Maglebys award of attorney fees and costs to \$2,500.00 against ITP and Jenks because Maglebys obtained a final judgment against them by default?**

OR

The District Court correctly exercised its discretion in not setting aside the default judgment against ITP and Jenks?

Maglebys elected to file for a default judgment against ITP and Jenks after they failed to appear within 20 days of their counsel withdrawing. The Court granted Maglebys motion for default judgment and limited their attorney fees and costs to \$2,500.00, which was the amount prayed for in their Complaint. The Court limited the attorney fees and costs to this amount based upon Idaho Rule of Civil Procedure 54(e)(4) which states:

Pleading- Default Judgments. It shall not be necessary for any party in a civil action to assert a claim for attorney fees in any pleading; provided, however, attorney fees, when claimed to be allowable by contract or statute other than section 12-121, Idaho Code,

shall not be awarded unless the prayer for relief in the complaint states that the party is seeking attorney fees and the dollar amount thereof in case judgment is entered by default. **Any award of attorney fees in default judgments shall be subject to the other provisions of this Rule 54(e), and shall not exceed the amount prayed for in the complaint.** Any award of attorney fees pursuant to I.C. Section 12-120, in default judgments in which the defendant has not appeared shall not exceed the amount of the judgment for the claim, exclusive of costs. (Emphasis added)

Maglebys maintain the default contemplated in Rule 54(e)(4) is intended to apply only when a party does not appear or answer by pointing to the last line of the above rule. *Appellate Brief*, p. 8. The last line of the rule is limiting the attorney fees to not be more than the amount of the judgment, but does not indicate the Court could award attorney fees greater than the amount prayed for in the Complaint when judgment is taken by default. The Rule is clear if a judgment is taken by default, then “any award of attorney fees ... shall not exceed the amount prayed for in the complaint.” *I.R.C.P. 54(e)(4)*. The Court upheld this Rule in limiting Maglebys attorney fees to \$2,500.00, which is the amount prayed for in their Complaint.

The Maglebys maintain Idaho Code § 45-513 mandates attorney fees to be awarded when there is a successful entry of a judgment of foreclosure of a lien. The foreclosure was entered against Garns. The Court awarded attorney fees of \$5,460.00 against Garns for fees relating to the foreclosure, which has not been challenged by Maglebys on appeal. *R.*, p. 488. The Court had also already granted attorney fees of \$2,500.00 against ITP and Jenks on Maglebys default judgment. Therefore, the Court properly exercised its discretion to not grant further attorney fees against ITP and Jenks based upon the foreclosure against the Garns under Idaho Code § 45-513.

Even if the Supreme Court does allow the Maglebys to obtain further attorney fees and costs against ITP and Jenks under Idaho Code §45-513, the District Court should be entitled to

use its discretion to determine the reasonable amount of the attorney fees and costs to be ordered against ITP and Jenks. The additional fees would need to be reasonable above and beyond the ones the Court has already ordered to be paid to Maglebys which is a total of \$7960.00 (\$5,460.00 against the Garns and \$2,500.00 against ITP and Jenks).

In the alternative, the District Court correctly exercised its discretion in not setting aside the default judgment against ITP and Jenks.

The Court usually is analyzing whether to set aside a default judgment at the request of a party who had default judgment entered against them as opposed to setting aside the default judgment at the request of the party who requested the default judgment. The Maglebys made the choice to request a default judgment rather than to continue to litigate the matter. The Court granted their request. The Court did not find any mistake, surprise, or excusable neglect which would justify the Maglebys being able to set aside a default judgment which they had requested.

2. The District Court improperly awarded post-judgment attorney fees against Garns.

The District Court determined that “[s]ince the Idaho Supreme Court interprets Idaho Code § 45-513 to include attorney fees on appeal, post-judgment attorney fees expended to collect a judgment should likewise come within the purview of the statute.” *R.*, *p.* 619. However, the Idaho Court of Appeals has ruled that “Idaho Code § 45-513 has frequently been held not to allow for attorney fees on appeal.” *Olsen v. Rowe*, 125 Idaho 686, 689, 873 P.2d 1340 (Ct.App. 1994). Therefore, the Court should not have relied upon Idaho Code § 45-513 to award post-judgment attorney fees and costs against Garns.

If the Supreme Court determines Maglebys are entitled to attorney fees against Garns, the

Garns maintain the District Court properly exercised its discretion to limit the award of attorney fees to \$990.00 and costs to \$298.21. The Court analyzed each of Maglebys expenses. The Court determined a portion of the expenses were incurred prior to entry of the Judgment, so these costs should be disallowed as post-judgment attorney fees. *R.*, p. 620. In addition, the District Court determined “Johnson’s time spent negotiating with Wells-Fargo and preparing to defend against Wells-Fargo’s temporary restraining order was not related to any action, claim, or defense by the Garns.” *Id.* The Court was correct in determining the Garns should not be held responsible for fees which were incurred prior the judgment being entered and for time spent dealing with Wells-Fargo. This was a proper exercise of the Court discretion, since the amount of attorney fees awarded by the Court against Garns dealt with only the reasonable fees which had been incurred to foreclose against Garns.

The Court improperly determined that Idaho Code § 45-513 allowed for attorney fees on appeal and thus allowed attorney fees and costs for post-judgment collection efforts against the Garns. If the Supreme Court determines fees are appropriate, the District Court properly exercised its discretion to limit the fees awarded against Garns.

3. The Garns are entitled to attorney fees pursuant to Idaho Code § 12-121 and their costs on appeal pursuant to Idaho Appellate Rule 40.

The Garns have had to continually incur expenses after they paid the cost of the judgment against them. Maglebys have refused to take final payment of the post-judgment and fees awarded against Garns. The present appeal against the Garns only deals with the District Courts ruling on post-judgment attorney fees and costs. The District Court properly exercised its

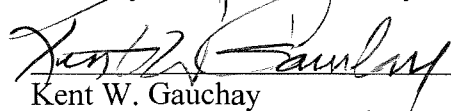
discretion in determining how much of these fees to award. This determination should not be overturned on appeal. The Garns believe the present appeal as it applies to them was brought frivolously and they should be entitled to attorney fees pursuant to Idaho Code § 12-121. In addition, the Garns should be entitled to their costs as prevailing parties on this appeal. There is no basis for this Court to award attorney fees against Garns on appeal, which was acknowledged by the Maglebys in their Appellate Brief. *Appellate Brief, p. 15.*

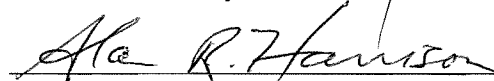
V. CONCLUSION

The District Court correctly exercised its discretion to limit Maglebys attorney fees and costs against Jenks and ITP to \$2,500.00 and deny Maglebys Motion to Set Aside the Default Judgment. The Court improperly awarded post-judgment attorney fees and costs against the Garns. If the Supreme Court determines post-judgment fees and costs are appropriate against Garns, then the Garns maintain the District Court properly exercised its discretion in limiting attorney fees to \$990.00 and costs to \$298.21. The Garns are entitled to their attorney fees and costs on appeal.

DATED this th 16 day of June, 2012.

Attorneys for Kevin and Tanya Garn


Kent W. Gauchay


Alan R. Harrison

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 6th day of June, 2012, caused two (2) true and correct copies of the attached RESPONDENTS GARNIS BRIEF to be served by the following methods to the following parties:

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